



msteinberg@morganlewis.co
m
05/08/2006 04:09 PM

To
Subject Re: access agreement



Richard,

I'm now back in town and I have discussed with my client your E-mail of last week. I can advise as follows regarding your four (4) suggested language changes.

1. Fee-shifting. XTRA is willing to accept your proposal that in the event either party breaches the access agreement and litigation ensues, the prevailing party should recover its attorney's fees and costs.

2. Selection of counsel. XTRA is also willing to accept your proposal that Blue Tee may select counsel to defend any third-party claims against XTRA arising out of this access agreement.

3. "Costs." With regard to the scope of the indemnity, XTRA believes the original language, which covered both "costs" and also "third-party claims," is appropriate here. This would cover any direct costs incurred by XTRA -- as opposed to third-party claims -- that are due to Blue Tee's activities on the site. I should also point out that the term "costs" appeared in all of the previous access agreements that our clients have executed, including those pertaining to the removal action and even the one last summer pertaining to the botanical inspection. XTRA sees no reason to eliminate it at this point.

4. "Right" versus "obligation." XTRA believes that the original term -- "obligation" -- is the most appropriate way to describe Blue Tee's duty of indemnification against third-party claims, as opposed to the term "right." If Blue Tee has a problem with the word "obligation," then I suppose we could just say " . . . to Blue Tee who shall indemnify, defend, and settle . . ." and omit the word "obligation," but I'm sure you'd agree it means the same thing.

I have attached for your convenience both a redline and also a "clean" original, signed on behalf of XTRA, that reflects these four (4) changes. If this is acceptable, please arrange for signature on behalf of Blue Tee and then return the executed agreement to me.

Many thanks for your assistance.

Mike Steinberg

(See attached file: XTRA001.PDF)

(See attached file: Revised Access Agreement for RI_FS Work at OAZ Site (MWS edits).DOC)

Michael W. Steinberg
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

(202) 739-5141

(202) 739-3001 (E-fax)

(301) 641-5508 (cell) (not always on)

E-mail: msteinberg@morganlewis.com

DISCLAIMER

This e-mail message is intended only for the personal use of the recipient(s) named above. This message may be an attorney-client communication and as such privileged and confidential. If you are not an intended recipient, you may not review, copy or distribute this message. If you have received this communication in error, please notify us immediately by e-mail and delete the original message.



XTRA001.PDF Revised Access Agreement for RI_FS Work at OAZ Site (MWS edits).DOC